

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: CAPACITORS ANTITRUST  
LITIGATION

MDL Case No. 17-md-02801-JD

Case No. 14-cv-03264-JD

**Report and Recommendations of Special Master  
on the  
Direct Purchaser Plaintiff Class Counsel's Request for Attorneys' Fees and  
Reimbursement of Expenses**

**November 22, 2019**

## **I. Assignment**

I was appointed as Special Master by the Court on August 23, 2019 to review Direct Purchaser Plaintiffs' (DPPs') class counsel's request for fees and costs as documented in MDL Dkt. Nos. 498, 594. In their submission, DPPs' class counsel reported fees of \$11,877,369 and expenses of \$2,000,001.52 for the period from January 1, 2018 through December 31, 2018 (See Exhibits 1 and 2).

## **II. Analysis of Fees**

1. For each class counsel firm, Lead Counsel, Joseph Saveri Law Firm, Inc. ("JSLF"), provided us an Excel file containing detailed time entries by date and by person. For each time entry, the Excel file includes the amount of time charged, the billing rate, a description of the task performed, the work category, and the fee amount. For each time entry, we re-calculated the fee amount based on the amount of time charged and the billing rate, noting no discrepancy. As reflected in Exhibit 1, for each firm, we compared the total of the detailed time entries to the fees reported in MDL Dkt. No. 498.
2. For 9 of the 15 class counsel firms, the total of the time entries in the Excel file matches the total fees by person and by category as stated in MDL Dkt. Nos. 498.
3. For 6 of the 15 class counsel firms, the fees reported in MDL Dkt. No. 498 were less than the total of the time entries in the Excel file. For example, the detail time entries show fees of \$5,471.00 for Cohen Milstein Sellers & Toll PLLC but no fees were reported in MDL Dkt. Nos. 498. I understand that Lead Counsel reviewed time entries and removed those that were deemed not billable. As such, it is reasonable that the fees reported in MDL Dkt. No. 498 would be less than the total of the time entries in the Excel file.
4. For 2 of the 15 class counsel firms, we noted that the work category for some time entries had been changed when reported in MDL Dkt. No. 498. I understand that the categorization was reviewed by Lead Counsel. To the extent Lead Counsel determined that a time entry was better suited to a different category, the exact dollar amount was relocated to another category for the same

person. Based on our review, the amount of re-categorized entries was immaterial.

5. Based on our review of the detailed time entries, the billing rate used by each timekeeper was consistent for the entire period.

### **III. Analysis of Litigation Fund Expenses**

1. As seen in the attached Exhibit 2, class counsel reported 2018 expenses of \$2,000,001.52 in MDL Dkt. No. 498, of which \$1,625,000 represented assessments paid by co-counsel firms to the Litigation Fund maintained by Lead Counsel.
2. In order to test the actual expenses paid by the Litigation Fund, Lead Counsel provided us an accounting register of the Litigation Fund for each year from inception in 2014 through 2018. These registers contain all Litigation Fund transactions. According to the registers, the Litigation Fund paid expenses totaling the following:

	<u>Amount</u>
2014	\$ 25,495.60
2015	847,085.15
2016	2,376,122.05
2017	8,012,571.94
2018	<u>1,717,630.52</u>
	<u><u>\$ 12,978,905.26</u></u>

In addition, Lead Counsel provided us invoices or supporting documents for all Litigation Fund expenses.

3. From the registers, we randomly selected 145 payments for testing. Our selections totaled \$6,788,223.52, or 52.3% of the total spending through December 31, 2018. Using materials provided by Lead Counsel, we were able to verify each selected item, noting that each related invoice or supporting document i) is addressed to Lead Counsel or co-counsel and ii) referenced “Capacitors,” a class plaintiff, or a deposition related to the subject litigation.

4. Of the samples tested, we noted one incorrect payment, in the amount of \$1,265.35. The related invoice indicates that the expenditure was not for the Capacitors matter. Since the error rate is only 0.02% (\$1,265.35 out of a total of \$6,788,223.52 tested), we have not selected additional items for testing.

#### **IV. Analysis of Individual Firm Expenses**

1. As previously stated, class counsel reported 2018 expenses of \$2,000,001.52 in MDL Dkt. No. 498, of which \$1,625,000 represented assessments paid by co-counsel firms to the Litigation Fund. Excluding the assessments resulted in actual expenses of \$375,001.52 incurred by the individual firms for the period from January 1, 2018 through December 31, 2018 (See Exhibit 2).
2. Lead Counsel provided us an Excel file containing a detailed listing of expenses claimed by JSFL. We verified claimed expenses with receipts that are included in MDL Dkt. No. 594. For some of the claimed expenses, JSFL provided additional receipts or documentation that were not included in MDL Dkt. No. 594.
3. For the other class counsel firms, we were provided receipts that are included in MDL Dkt. No. 594 but not a detailed listing of the expenses claimed. As such, for each firm, we tallied the submitted receipts to determine if they support the amount claimed. In some cases, class counsel firms provided additional receipts or documentation that were not included in MDL Dkt. No. 594.
4. Based on our review, the claimed expenses are primarily related to travel, meals, and in-house copying. Except for an insignificant amount for some firms, the total amount of expenses claimed is supported by receipts or documents indicating that each individual expense was incurred during the subject period and was of a reasonable nature.
5. In addition, for out-of-town meals, we reviewed to ensure that they were not in excess of the \$75 per diem. We noted some meals that were in excess of the \$75 per diem.
6. Based on our analysis, the \$375,001.52 of individual firm expenses claimed by class counsel, for the period from January 1, 2018 through December 31, 2018,

should be reduced by \$2,191.78 to \$372,809.74. The adjustments are summarized in Exhibit 2.

## V. Conclusion

### Fees:

Based on our analysis, fees of \$11,877,369 claimed by class counsel for the period from January 1, 2018 through December 31, 2018 are supported by detailed time entries.

### Expenses:

Based on our analysis, Litigation Fund and individual firm expenses from inception through December 31, 2018 should be adjusted as follows:

	Amount	Adjustment	Adjusted
Litigation Fund Expenses	\$ 12,978,905.26	\$ (1,265.35)	\$ 12,977,639.91
Individual Firm Expenses:			
2017-01-30 Decl., Dkt. 1458 <sup>1</sup>	513,894.88		513,894.88
2018-05-03 Decl., Dkt. 2108 <sup>2</sup>	428,244.90		428,244.90
2019-03-01 Decl., MDL Dkt. 498	375,001.52	(2,191.78)	372,809.74
	1,317,141.30	(2,191.78)	1,314,949.52
Total Expenses	\$ 14,296,046.56	\$ (3,457.13)	\$ 14,292,589.43

I understand that class counsel has received expense reimbursements totaling \$9,690,000.00.<sup>3</sup> As such, unreimbursed expenses through December 31, 2018 totaled \$4,602,589.43.<sup>4</sup> I understand that class counsel is requesting an expense reimbursement of \$3,000,000.<sup>5</sup> Since the requested amount is less than the amount of unreimbursed expenses, class counsel's request appears reasonable.

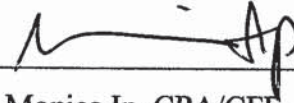
<sup>1</sup> We have not tested these individual firm expenses. These expenses were reported in a previous request for reimbursement. In addition, testing of 2018 individual firm expenses revealed an error rate of only 0.58%.

<sup>2</sup> See Footnote 1.

<sup>3</sup> Dkt. 1458, 3:7-8 and Dkt. 2108, 4:20-23.

<sup>4</sup> \$14,292,589.43 - \$9,690,000 = \$4,602,589.43.

<sup>5</sup> MDL Dkt. Nos. 498, 1:5-7.

A handwritten signature in black ink, appearing to read 'M. Monica Ip', is written over a horizontal line.

M. Monica Ip, CPA/CFF, CVA, CMA

**Exhibit 1**  
**DPPs' Counsel's Fees**  
**1/1/2018 Through 12/31/2018**  
**Reported Fees v. Fees Per Time Entries**

	a	b	a-b
<b>Firm</b>	<b>Reported Fees</b>	<b>Fees Per Detailed Time Entries</b>	<b>Difference</b>
1 Joseph Saveri Law Firm, Inc.	MDL Dkt. 0498-2 \$ 6,913,207.00	\$ 6,913,207.00	\$ -
2 Berger Montague PC	MDL Dkt. 0498-4 958,398.50	958,906.50	(508.00)
3 Cera LLP	MDL Dkt. 0498-5 396,693.00	396,713.00	(20.00)
4 Cohen Milstein Sellers & Toll PLLC	MDL Dkt. 0498-6	5,471.00	(5,471.00)
5 Fine, Kaplan and Black, R.P.C	MDL Dkt. 0498-7 286,680.00	286,680.00	-
6 Freed Kanner London & Millen LLC	MDL Dkt. 0498-8 457.50	457.50	-
7 Girard Sharp LLP	MDL Dkt. 0498-9 878,220.00	881,340.00	(3,120.00)
8 Gross & Klein LLP	MDL Dkt. 0498-10 613,266.50	698,967.50	(85,701.00)
9 Heins Mills & Olson, P.L.C.	MDL Dkt. 0498-11 16,320.00	16,320.00	-
10 Karon LLC	MDL Dkt. 0498-12 139.00	139.00	-
11 Levin Sedran & Berman LLP	MDL Dkt. 0498-13 901,175.50	902,759.50	(1,584.00)
12 Lite DePalama Greenberg, LLC	MDL Dkt. 0498-14 1,480.00	1,480.00	-
13 Radice Law Firm, P.C.	MDL Dkt. 0498-15 647,224.00	647,224.00	-
14 Spector Roseman & Kodroff, P. C.	MDL Dkt. 0498-16 630.00	630.00	-
15 Hartley LLP	MDL Dkt. 0498-17 263,478.00	263,478.00	-
	<b>\$11,877,369.00</b>	<b>\$11,973,773.00</b>	<b>\$ (96,404.00)</b>

**Exhibit 2**  
**DPPs' Counsel's Expenses**  
**1/1/2018 Through 12/31/2018**  
**Reported v. Adjusted Individual Firm Expenses**

Firm	Reference	Reported Expenses			Adjustment				Adjusted Firm Expenses
		Per Declaration	Assessments Included in Reported Expenses	Firm Expenses	Claimed Amount in Excess of Receipts/ Documentation	Out-Of-Town Meals in Excess of \$75 Per Diem	Airfare Incorrectly Charged to Capacitors	Total Adjustments	
1 Joseph Saveri Law Firm, Inc.	MDL Dkt. 0498-3	\$ 331,080.74	\$ -	\$ 331,080.74	\$ (318.75)	\$ (788.55)	\$	\$ (1,107.30)	\$ 329,973.44
2 Berger Montague PC	MDL Dkt. 0498-4	160,563.54	150,000.00	10,563.54	(41.65)	(7.69)		(49.34)	10,514.20
3 Cera LLP	MDL Dkt. 0498-5	161,400.46	150,000.00	11,400.46		(232.48)		(232.48)	11,167.98
4 Cohen Milstein Sellers & Toll PLLC	MDL Dkt. 0498-6	250,176.06	250,000.00	176.06				-	176.06
5 Fine, Kaplan and Black, R.P.C	MDL Dkt. 0498-7	150,272.20	150,000.00	272.20				-	272.20
6 Freed Kanner London & Millen LLC	MDL Dkt. 0498-8	75,034.31	75,000.00	34.31	(4.00)			(4.00)	30.31
7 Girard Sharp LLP	MDL Dkt. 0498-9	152,572.23	150,000.00	2,572.23	(1.04)			(1.04)	2,571.19
8 Gross & Klein LLP	MDL Dkt. 0498-10	100,000.00	100,000.00	-				-	-
9 Heins Mills & Olson, P.L.C.	MDL Dkt. 0498-11	150,176.06	150,000.00	176.06	(2.30)			(2.30)	173.76
10 Karon LLC	MDL Dkt. 0498-12	75,001.40	75,000.00	1.40				-	1.40
11 Levin Sedran & Berman LLP	MDL Dkt. 0498-13	212,857.91	200,000.00	12,857.91				-	12,857.91
12 Lite DePalama Greenberg, LLC	MDL Dkt. 0498-14	50,000.00	50,000.00	-				-	-
13 Radice Law Firm, P.C.	MDL Dkt. 0498-15	75,000.00	75,000.00	-				-	-
14 Spector Roseman & Kodroff, P. C.	MDL Dkt. 0498-16	50,005.30	50,000.00	5.30	(5.30)	(250.62)	(539.40)	(5.30)	0.00
15 Hartley LLP	MDL Dkt. 0498-17	5,861.31		5,861.31				(790.02)	5,071.29
		\$2,000,001.52	\$1,625,000.00	\$ 375,001.52	\$ (373.04)	\$ (1,279.34)	\$ (539.40)	\$ (2,191.78)	\$ 372,809.74